UNITED
NATIONS

AT

Administrative Tribunal

Distr.
LIMITED

AT/DEC/831
1 August 1997

ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 831

Case No. 876: AL-SHAMI

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, First Vice-President, presiding; Mr. Mikuin Leliel Balanda, Second Vice President; Mr. Mayer Gabay;

Whereas at the request of Jamal Al-Din Al-Shami, a former staff member of the United Nations Development Programme, (hereinafter referred to as UNDP), the President of the Tribunal, with the agreement of the Respondent, extended the time-limit for the filing of an application with the Tribunal until 31 July 1994;

Whereas, on 19 June and 11 October 1994, the Applicant filed applications that did not fulfil all the formal requirements of article 7 of the Rules of the Tribunal;

Whereas, at the request of the Applicant, the President of the Tribunal, with the agreement of the Respondent, again extended the time-limit for the filing of an application with the Tribunal until 30 November 1994 and 31 March 1995;

Whereas, on 29 March 1995, the Applicant filed an application requesting the Tribunal, inter alia, to:

"...

3. Reinstat[e] me in my post and [award] a fair compensation [for] the period of joblessness.

...

5. Due to [the] situation in Iraq and non-acceptability of our currency by any body outside Iraq, and [the fact that the] transfer of money [is] illegal, I request that I be allowed to pay the fees of an outside lawyer in local currency through UNDP Baghdad."

Whereas the Respondent filed his answer on 12 March 1996;

Whereas, on 8 November 1996, the Tribunal requested the Respondent to provide it with answers to certain questions;

Whereas, on 11 and 12 November 1996, the Respondent wrote to the Tribunal concerning the questions referred to above and, inter alia, requested an extension of the time-limit in which to respond to the questions, given technical difficulties encountered in obtaining information;

Whereas, on 15 November 1995, the President of the Tribunal ruled that the case would be adjourned until the next session of the Tribunal;

Whereas, on 15 March 1997, the Respondent provided the Tribunal with the answers to the questions posed on 8 November 1996;

Whereas the facts in the case are as follows:

On 1 February 1990, the Applicant entered the service of UNDP in Iraq under a Special Service Agreement (SSA) as a Principal Assistant for administrative support functions; the Applicant served on SSAs until October 1990. On 1 October 1990, he was appointed to the post of Senior Administrative Assistant at the G-7, step IV level, on a three-month, fixed-term appointment. On 1 January 1991, his appointment was extended for one year and, subsequently, by another month, until 31 January 1992, the date on which he was separated.

On 17 October 1991, the Applicant wrote to the UNDP Resident Representative in Iraq, requesting a change in his status from General Service to Professional. The Applicant claimed that for

more than a year, there had been no sign of any change of his status and that therefore, "[f]or the above reasons, while I will continue to honor the gentlemen's understanding we had in the meeting of 28.1.1990, I would like to change my work from administration to other areas more in line with my experience and qualifications. If for any reason this is not possible, then I would request termination of my services on 31 May 1992."

The Resident Representative sent letters to UNDP in New York, the United Nations Educational, Scientific and Cultural Organization (10 February 1991) and the UN Department of Technical Cooperation for Development (27 July 1991), attaching a copy of the Applicant's personal history and references, in an effort to obtain for the Applicant a professional position.

On 11 November 1991, the Resident Representative replied to the Applicant's memorandum of 17 October 1991, informing him that "... on exceptional grounds, to enable you [to] avail your[self of] 3 months' salary bonus as maximum leave salary in convertible currency, I have approved extension of your present contract by one month, up to 31 January 1992." On 31 January 1992, the Applicant was separated from service.

On 29 July 1992, the Applicant wrote to the Administrator, UNDP, requesting a review of the decision not to extend his contract. In a reply dated 13 October 1992, the Chief, Legal Section, UNDP Division of Personnel advised the Applicant that "the decision taken in your case was in conformity with the terms of your appointment and the relevant staff rules."

On 26 March 1993, the Applicant lodged an appeal with the Joint Appeals Board (JAB).

On 15 February 1994, the JAB adopted its report. Its considerations, conclusions and recommendations read as follows:

"Considerations

17. The Panel noted that the case before it resulted from a situation in which the Appellant himself, in his letter of 17 October 1991 to the Resident Representative, requested to be separated from service on 31 May 1992 since his office functions had not been changed from administration into other areas in line with his experience and qualifications (...).

18. The Panel had to determine the validity of Appellant's claim that the decision taken by the Resident Representative to separate him from service was tainted by bias and, as was contended by the Appellant, the letter was only used as a pretext to do so.

19. In this context the Panel noted the Respondent's contention that the Resident Representative had acted within his authority in separating the Appellant upon the expiration of his existing fixed-term appointment, particularly in light of the Appellant's letter. Furthermore, there was no obligation to separate the Appellant on the date requested by him.

20. The Panel also considered the question of whether a promise to give the Appellant a post at the professional level had been made. In this context the Panel examined the Resident Representative's comments in which he explained that the intention was only to provide the Appellant with a chance to compete for the National Professional Officer (NPO) post, not to promise him the post. The Resident Representative stated that 'in fact, [the Applicant] was provided with a great advantage over those who would have competed for the post by providing him with an opportunity to apply as an internal candidate already familiar with the organization and its working methods.' The Resident Representative further explained that, as a result of the sanctions against Iraq and the subsequent freezing of the Programme, the NPO post for which the Appellant was expected to compete, was not to be filled.

21. The Panel also considered the Appellant's contention that the decision to separate the Appellant had been taken because of the allegations made by him regarding misconduct on the part of the Resident Representative. In examining the report on that subject submitted by the UNDP's Internal Audit (...), the Panel noted the statement made by the Director, Division for Audit and Management Review, namely, that the

report clearly indicated that the allegations were either unsubstantiated or did not provide any evidence which would lead to the confirmation of their validity.

Conclusions and Recommendations

22. The Panel found that the Appellant did not submit convincing evidence that the Resident Representative had promised him a professional post. In the absence of persuasive evidence to the contrary, the Panel found that the explanation given by the Resident Representative on the above-mentioned alleged promise [was] plausible and convincing.

23. The Panel further found that there was no convincing evidence that the decision in question was tainted by bias. The Panel felt that in this case the Resident Representative took the Appellant at his word and therefore did not extend his contract.

24. Accordingly, the Panel recommends that the appeal be rejected."

On 25 February 1994, the Officer-in-Charge, Department of Administration and Management, informed the Applicant as follows:

"The Secretary-General has examined your case in the light of the Board's report. He has noted the Board's findings that your claim that you were promised a future professional post, and your allegation that the decision not to renew your fixed-term appointment on its expiration on 31 January 1992 was tainted by bias were both unsubstantiated. He has also noted its recommendation that your appeal be rejected. The Secretary-General has therefore decided to take no further action in respect of your appeal".

On 29 March 1995, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The decision not to renew the Applicant's appointment was biased as it was based on the UNDP Resident Representative's negative personal attitude towards him.

Whereas the Respondent's principal contentions are:

1. The Applicant had no legal expectancy of renewal of his fixed-term appointment.

2. The decision not to renew the Applicant's contract was not vitiated by extraneous factors.

The Tribunal, having deliberated from 15 July to 1 August 1997, now pronounces the following judgement:

I. The Applicant's initial appointment was a three-month fixed-term appointment, which was extended by one year and, subsequently, by a month. The Applicant was separated on 31 January 1992.

By memorandum of 17 October 1991, to the Resident Representative, the Applicant requested a change of his status to "professional" and added that, if this were not possible, he would request termination of his services with effect from 31 May 1992. The memorandum referred to "very encouraging responses" from the Resident Representative and his Deputy to the Applicant's "desire to leave his Government post and to work with UNDP, if a professional post could be made available." The memorandum also refers to assurances, allegedly given by the Resident Representative to the Applicant, of a successful future for him in the service.

II. In response to the memorandum of 17 October 1991, the Resident Representative approved an extension of the Applicant's appointment for one month, to 31 January 1992. The reason for this extension is not clear, but the Respondent stated that it was being done "on exceptional grounds, to enable [the Applicant to] avail [himself of] three months' salary bonus, as maximum leave salary, in convertible currency."

The Applicant argues that the assurances given to him were such that he expected to be reappointed. He further asserts that he had given up his post with his Government because of these assurances.

III. The Tribunal finds no evidence that assurances were given. The Applicant's resignation from his Government post is not, of itself, sufficient to establish that he received such assurances and no other evidence was found.

IV. Similarly, letters written by the Resident Representative to the Director of Personnel, which supported the Applicant in his quest for an international post, do no more, on the face of them, than show an attempt by the Resident Representative to assist the Applicant.

V. Therefore, in the absence of evidence, the question of the effect of assurances of the kind described by the Applicant vis-à-vis renewal of his contract does not arise for consideration.

The Applicant also contends that his contract was not renewed because of bias on the part of the Resident Representative. The thrust of this part of the Applicant's case is that he revealed irregularities by the Resident Representative in the conduct of his work. Inquiries by the Tribunal however showed that there was no basis for such allegations. On the other hand, evidence shows that the Respondent was helpful to the Applicant at all stages. Therefore, allegations of bias or prejudice cannot, in the view of the Tribunal, be sustained.

VI. As the holder of a fixed-term contract, the Applicant, did not have a right to renewal of that contract. In the circumstances, to succeed in his pleas, the Applicant would have to show, at a minimum, that the making of allegations resulted in his exclusion

from any consideration for renewal which he, otherwise, would have been afforded. The Applicant has failed to do this.

VII. The Tribunal therefore rejects the application in its entirety.

(Signatures)

Samar SEN
First Vice-President, presiding

Mikuin Leliel BALANDA
Second Vice-President

Mayer GABAY
Member

Geneva, 1 August 1997

R. Maria VICIEN-MILBURN
Executive Secretary